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**FILED**

OCT 27 2017

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

5 UNITED STATES BANKRUPTCY COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7 SAN FRANCISCO DIVISION

8  
9 In re: Carl Alexander Wescott, ) Chapter 7 Bankruptcy No. 12-30143  
10 Monette Rosemary Stephens, Debtors ) Adversary Proceeding 12-03148 DM  
11 )

12 Janina M. Hoskins, Trustee ) MOTION TO UNSEAL RECORDS

13 v. )

14 Wescott, *et. al.*

) HEARING DATE: DEC NOV. 15, 2017 10 AM

450 GOLDEN GATE 16<sup>th</sup> FLOOR Room 17

15 **MOTION TO UNSEAL TESTIMONY**

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17  
18 Debtor and Defendant Carl Alexander Wescott ("Movant") requests that this Court issue an  
19 Order directing the Clerk of the Court to make public all exhibits and testimony filed and  
20 provided in connection with the instant case adversary proceeding trial held on October 2<sup>nd</sup> and  
21 3<sup>rd</sup>, 2013 and November 4<sup>th</sup>, 2013, objecting to the discharge of Debtor Monette Rosemary  
22 Stephens ("Ms. Stephens") and, in support of his Motion, the Movant states as follows:  
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- 24 1. There is a strong presumption of public access to judicial proceedings. *EEOC v. National*  
25 *Children's Center*, 98 F.3<sup>rd</sup> 1409 (DC Cir. 1996).

26 The Courts are public institutions that best serve the public when they conduct  
27 their business openly and in full view. 98 F.3<sup>rd</sup> at 1411.  
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1 Thus, at a minimum, the decision to seal records should be made as a result of thorough  
2 submissions offered to the Court balancing the public's right to have access to the  
3 documents and evidence that formed the basis for a key ruling by the Court against  
4 whatever private interest is served by denying public access.

- 5
- 6 2. In this case, the Motion to seal testimony was apparently made orally on the record and  
7 with no briefing or significant discussion (Movant states this upon Information and  
8 Belief, not finding a Motion to Seal Testimony on the docket).
- 9 3. As the Court's Opinion docketed September 30, 2014 reflected, the Movant did not  
10 participate in the trial, because he was not provided with notice of the trial. Neither side  
11 informed Movant of the trial nor requested his attendance nor requested his participation  
12 as a witness. As a practical matter, the Movant could not cross-examine witnesses or  
13 otherwise test the sufficiency of the evidence presented.
- 14
- 15 4. Yet, the Court's acceptance of Ms. Stephens's defense of "duress" necessarily painted the  
16 Movant as an abusive and manipulative husband who essentially intimidated and  
17 mesmerized Ms. Stephens into entering into myriad financial transactions that Ms.  
18 Stephens admitted she understood. See, for example, Opinion of Court at page 9 in which  
19 Ms. Stephens acknowledged transferring money from her personal account to an LLC  
20 account precisely because her personal accounts had been attached. This snippet of  
21 testimony does not appear to be an account by a sufferer from Stockholm Syndrome.  
22 Creditors were attaching Ms. Stephens's personal accounts and Ms. Stephens knowingly  
23 transferred money beyond their reach.  
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- 1 5. The Court's Opinion notes the Trustee's strenuous Objection to Ms. Stephens's discharge  
2 and actually commends the Trustee for her vigilance and professionalism in presenting  
3 that Objection. See Opinion at page 24. The Court thus implicitly acknowledged that  
4 reasonable minds could differ on whether Ms. Stephens's duress defense was sufficient in  
5 law or, indeed, supported by the facts. Yet, Ms. Stephens has utilized the Court's  
6 conclusions to deprive the Movant of parenting rights that were not an issue before this  
7 Court.  
8
- 9 6. Ms. Stephens's family law attorney, Mr. Terry Szucsko introduced the Court's Opinion  
10 into evidence before the Honorable Judge Colfax in the Movant's divorce proceedings  
11 (Case number FDI-14-781666, San Francisco Superior Court). Immediately prior to that,  
12 Colfax had ruled that Movant would have visitation with his three minor children.  
13 Immediately thereafter, upon Szucsko's reading of many of the conclusions of the Court,  
14 Judge Colfax reversed herself on the issue of the Movant's visitation with the parties'  
15 children. Judge Colfax then summarily denied all visitation rights to the Movant.  
16
- 17 7. Thus, this Court's Opinion was and is the fundamental reason that Movant did not have  
18 time with his children, and that his children were deprived of time with their father.  
19
- 20 8. The Movant has a due process right to confront and cross-examine witnesses. Although  
21 the 6<sup>th</sup> Amendment confrontation clause applies only to criminal proceedings, there is a  
22 5<sup>th</sup> and 14<sup>th</sup> amendment substantive due process right to confront and cross-examine  
23 witnesses where a fundamental right is implicated. *Greene v. McElroy*, 360 US 474, 492  
24 (1959). The right to participate in parenting and to make parenting choices is one of those  
25 fundamental rights under the 14<sup>th</sup> amendment. *Troxel v. Granville*, 530 US 57 (2000).  
26 The Movant is thus being deprived of a fundamental constitutional right without due  
27 process.  
28

1 9. Ms. Stephens and her counsel, Mr. Szucsko are cynically and callously misusing the  
2 Court's Opinion that was never intended to constrain or diminish the Movant's parental  
3 rights, to do exactly that. The Court's Opinion is diligent and contains many citations to  
4 the record, creating a patina of reliability. But, as the Court will realize, the citations are  
5 to a record that the Movant was not permitted to shape. The deck was stacked against  
6 him. The Trustee was not representing his interests; the witnesses were hand-picked by  
7 Ms. Stephens and Ms. Stephens's counsel; and Ms. Stephens's testimony was utterly self-  
8 serving.  
9

10 10. The Court's Opinion paints the Movant as an individual with a propensity to violence and  
11 an uncontrollable temper. See Opinion at pp: 16-18. Moreover, the Court makes  
12 references to "the undisputed testimony" that Ms. Stephens was, for all practical  
13 purposes, a "single parent" of three boys. See Opinion at p. 20. The Movant vigorously  
14 disputes that conclusion and has the right to dispute the supportive testimony. While the  
15 Court obviously did not intend to mislead, it is unavoidably misleading to characterize  
16 testimony as "undisputed" when the party best able and most strongly motivated to  
17 dispute the testimony is not permitted to do so.  
18

19 11. The Court's Opinion acknowledges that Ms. Stephens did not utilize expert testimony.  
20 (Opinion at p. 20.) Ms. Stephens adduced the testimony of two non-experts, Mark  
21 Cromack and Kristine Schwartz who were and are both exceptionally close friends of Ms.  
22 Stephens for 30+ years in Santa Barbara. However, at the time of their testimony, neither  
23 had even ever been to Movant's San Francisco house! (at least while Movant was there).  
24

25 12. One inference from this paucity of testimony is that Ms. Stephens could not engage a  
26 qualified expert based on the thinness of her case and the fact that anyone who actually  
27 knew Movant would not support her story.  
28



1 13. The lack of expert testimony, the attenuated nature of Movant's connection to the non-  
2 expert witnesses, the strenuous objection of the Trustee, the belated raising of the duress  
3 defense by Ms. Stephens and Ms. Stephens's own concessions concerning her knowledge  
4 of the reason for the transactions the Trustee had complained of all suggest that the  
5 characterization of the Movant as abusive by Ms. Stephens's legal team is open to an  
6 array of challenges. The effect of sealing the evidence and issuing the conclusions and  
7 characterizations of the Movant is to achieve a kind of *de facto* collateral estoppel.  
8

9 14. The Movant cannot dispute hidden testimony. In the meantime, the Movant's parenting  
10 rights – protected under the 14<sup>th</sup> amendment – have been terminated based on the same  
11 hidden, secret testimony.  
12

13 15. Relatedly, the Movant's allegedly uncontrollable temper and propensity to violence has  
14 (most improbably) not generated legal consequences for the Movant in any other life  
15 context. The Court's Opinion, with multiple citations to the sealed testimony, describes  
16 the Movant as someone who is out of control, who smashes equipment with weights that  
17 "look like baseball bats". Opinion pp 17-18. It would be difficult for Judge Colfax or any  
18 future family law judge to read the Opinion without questioning the parental fitness of the  
19 Movant even though any testimony supportive of the specific allegations may be  
20 demonstrably fanciful or exaggerated.  
21

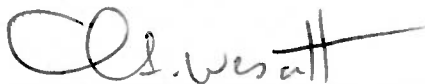
22 16. In conclusion, no public interest is served by keeping this testimony sealed. No  
23 compelling private interest is served by sealing the testimony. The presumption is in  
24 favor of open proceedings subject to independent critical evaluation by the public and by  
25 other Judges taking judicial notice of the proceedings. The Movant is being deprived of  
26 his parental rights, in material part, by testimony that was not tested by the Movant's  
27 cross examination and was not rebutted by witnesses the Movant could have called.  
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1 The Movant is fending off an invisible assailant. While it is not now possible to  
2 retroactively insert the Movant into the 2013 Proceedings, he would be able to respond to  
3 specific testimony with his own evidence. Without access to that testimony, the Court's  
4 conclusions, which were uninformed by the Movant's input and thus were never intended  
5 to abridge the Movant's rights, carry overwhelming weight with any state trial judge. The  
6 Movant is suffering prejudice that amounts to a deprivation of due process under the 5<sup>th</sup>  
7 and 14<sup>th</sup> amendments.  
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10  
11 WHEREFORE Movant Carl Wescott requests that this Court issue an Order:

- 12 (a) Directing the Clerk of the Court to make public all exhibits and testimony filed and  
13 provided in connection with the Trial on the Trustee's Objection to the Discharge of  
14 Debtor Monette Rosemary Stephens and;  
15  
16 (b) Providing the Movant with such other, further relief as the Court deems Just.  
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18 Respectfully Submitted,  
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21 Carl Alexander Wescott Pro Se  
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